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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TAKEHIKO NAKANO

Appeal 2008-6309
Application 10/062,991
Technology Center 2600

Decided:¹ March 16, 2009

Before MAHSHID D. SAADAT, KARL D. EASTHOM
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-26. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellant's claimed invention is directed to content recording/reproducing apparatus, a storage medium, and a computer program which are capable of recording and reproducing content which is limited in its recording retention period or reproduction period (Spec. 4:11-15).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A content recording/reproducing apparatus for controlling the recording and reproducing of content limited in viewable period, comprising:

content recording means for recording content received from the outside;

determination means for determining a viewable period of the recorded content;

presentation means for presenting information associated with said viewable period of said recorded content;

content reproduction means for reproducing said recorded content; and

reproduction control means for controlling a reproducing operation of said content reproduction means in accordance with said viewable period of said recorded content.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Jerding	US 7,010,801 B1	Mar. 07, 2006 (filed on Jun. 11, 1999)
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The following rejection is before us for review:

The Examiner rejected claims 1-26 under 35 U.S.C. § 102(e) as being anticipated by Jerding.

Appellant argues the rejection of claims 1-26 as a group with claim 1 as representative (App. Br. 14).² Accordingly, claims 2-26 stand or fall with claim 1. *See* 37 C.F.R. § 41.37 (c)(1)(vii) (2004).

ISSUE

Appellant contends that Jerding teaches that the media-on-demand (MOD) title may be stored at the server, but the title is not recorded at the user end—it is only rented and viewed (App. Br. 12). Appellant further contends that Jerding does not teach that the content must be “received from the outside” before it is recorded as recited in claim 1 (App. Br. 13). Appellant states that there is no teaching or suggestion in Jerding that headend 11 records a program or reproduces the program (Reply Br. 3).

² Only arguments made by Appellant have been considered in this decision. Arguments which Appellant could have made but did not make in the Brief have not been considered and are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

The Examiner responds that the claim limitation does not recite that the “user may request to record the video” (Ans. 8). The Examiner further responds that the claim limitation, with respect to recording, only recites “recording means for recording content received from the outside” (Ans. 8). The Examiner states that Jerding discloses in Figure 1 headend 11 which receives television signals from satellite television signals and through network 18 directs the signals to video recorders (Ans. 8). The Examiner further states that Jerding teaches additional video-on-demand (VOD) title presentation using VCR-like commands including rewind, pause, stop, fast-forward (Ans. 8, col. 25, ll. 41-56). The Examiner reasons that in order to perform a VCR-like function such as rewind, pause, stop, and fast-forward, there must be at least a memory to record and reproduce the video data from satellite television signals, and similarly, that in order to rent a program, there must be a memory to record and reproduce the video data (Ans. 8).

The issue before us, then, is as follows:

Has Appellant shown that the Examiner erred by determining that Jerding teaches “content recording means for recording content received from the outside” as recited in representative claim 1?

FINDINGS OF FACT

The relevant facts include the following:

1. Jerding teaches that headend 11 receives television signals, such as satellite signals, and converts the signals into a format for transmission over the system 10 (col. 4, ll. 4-7 and Fig. 1).

2. Jerding teaches that headend 11 includes the media-on-demand server 19, the video-on-demand (VOD) content manager 21, and the VOD content server 22 (Fig. 2).
3. Jerding teaches that the MOD application server 19 is responsible for controlling the VOD content manager 21 and VOD content server 22 (col. 5, ll. 23-25).
4. Jerding also teaches that the video-on-demand (VOD) stream control functionality includes VCR-like commands including fast-forward, rewind, pause, and stop (col. 25, ll. 41-56).
5. Jerding teaches that the user, through use of the remote 40, initiates commands, such as fast-forward, stop, play or pause which are sent to the VOD content server 22 which then provides the appropriate response to the display 31 (col. 25, l. 57-col. 26, l. 48).
6. Jerding further teaches that the commands on the video stream may be on “a separate video stream from the real-time video stream” (col. 25, ll. 64-67 and col. 26, ll. 16-18).

PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. Inc., v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

ANALYSIS

Jerding teaches that headend 11 receives television signals, such as satellite signals (i.e., content received from the outside), and converts the signals into a format for transmission over the system 10 (Finding of Fact 1). Jerding further teaches that headend 11 includes the media-on-demand server 19, the video-on-demand (VOD) content manager 21, and the VOD content server 22 (Finding of Fact 2). Jerding teaches that the MOD application server 19 is responsible for controlling the VOD content manager 21 and VOD content server 22 (Finding of Fact 3). Jerding also teaches that the video-on-demand (VOD) stream control functionality includes VCR-like commands including fast-forward, rewind, pause, and stop (Finding of Fact 4). Jerding teaches that the user through use of the remote 40 initiates commands, such as fast-forward, stop, play or pause which are sent to the VOD content server 22 which in turn provides the appropriate response to the display 31 (Finding of Fact 5). Jerding further teaches that the commands on the video stream may be on “*a separate video stream from the real-time video stream*” (Finding of Fact 6)(emphasis added). Thus, Jerding discloses content recording means (VOD content server 22 of headend 11) for recording content (non real-time video content) received from the outside (satellite television signals received by headend 11) as recited in representative claim 1 (Findings of Fact 1-6).

Furthermore, we note that Appellant’s argument stating that the title is not recorded at the user end is not commensurate in scope with the claim limitations as nothing in the claim language indicates that the recording must be performed at the user end. Moreover, the term “outside” does not limit the claim language as anything recorded at a recorder must necessarily be received from the outside.

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For the foregoing reasons, Appellant has not persuaded us that the Examiner erred in rejecting representative claim 1 or claims 2-26 which fall with claim 1. Accordingly, we sustain the Examiner's rejection of these claims.

CONCLUSION

Appellant has not shown that the Examiner erred by determining that Jerding teaches "content recording means for recording content received from the outside."

ORDER

The decision of the Examiner to reject claims 1-26 under 35 U.S.C. § 102(e) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

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